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CC. Seera Penny, CCC Private Secretary, [Penny.Seera@theccc.gsi.gov.uk](mailto:Penny.Seera@theccc.gsi.gov.uk)

Dear Madam or Sir

**R (Plan B. Earth) and Ors v Secretary of State for Business, Energy and Industrial Strategy (Interested Party: The Committee on Climate Change) - CO/16/2018**

We write further to recent public statements seemingly made on behalf of your client in order to seek clarity on your client's position.

In particular, we are aware that on 17 April 2018, the Minister of State for Energy and Clean Growth (the "Energy Minister") announced at the meeting of the Commonwealth Heads of Government that the UK Government "will be seeking advice from the UK's independent advisers, the Committee on Climate Change (CCC), on the implications of the Paris Agreement for the UK's long-term reduction targets."

We also note that a number of similar statements were made by the Energy Minister in Parliament on 1 May 2018 in response to Parliamentary questions. In particular:

- (a) "The Government will be seeking the advice of the Committee on Climate Change (CCC) on this issue after the Intergovernmental Panel on Climate Change (IPCC) publishes its Special Report on the impacts of global warming of 1.5oC later this year. We will work with the CCC to agree an appropriate timetable for the provision of their advice."
- (b) "The Clean Growth Strategy made clear that the Government believes the UK will need to legislate for a net

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*zero emissions target at an appropriate point in the future, to provide legal certainty on where the UK is heading.*

*We will seek the Committee on Climate Change's (CCC) advice on the implications of Paris Agreement for the UK's long-term targets, after the release of the IPCC Special Report later this year."*

- (c) *"We have led the world in decarbonising our economy. As the hon. Gentleman knows, we were the first country to set up statutory carbon budgets, and we are on track to meet the first three, as well as to get close to the budgets, based on current policies and proposals, in 10 and 15 years' time. He will also know that we are the first developed nation to have said that we want to understand how we will get to a zero-carbon economy in 2050, and my request to the committee—[Interruption.] He is doing it again, Mr Speaker; his mother would be horrified by this level of discourtesy. We were the first country in the world to ask how we will get to a decarbonised economy in 2050, and I would hope that we could enjoy cross-party support for something so vital."*

It would therefore appear that the Defendant is taking steps towards what our clients have been seeking in advance of and throughout these proceedings, namely seeking proper advice from the CCC, and making a decision on revision of the 2050 Target in accordance with the UK's international law obligations, which include the obligation arising under the Paris Agreement to pursue efforts towards 1.5°C.

However, there remains significant uncertainty as to the formalisation, scope and timing of the request for advice from the CCC, the giving of that advice by the CCC and the subsequent decision by the Defendant. If such matters can be appropriately clarified, then it may be possible for the proceedings to be resolved without the expenditure of further costs by all parties and the Court.

Accordingly, and such that our client can properly consider its position in the litigation, we would be grateful if you could clarify urgently:

- (a) when a formal request for advice from the CCC will be made;
- (b) the scope of that request; and
- (c) the timetable for the giving of advice and a subsequent decision by the Defendant.

### The request for advice

In respect of (a), the above statements would suggest that the Defendant intends to commission advice at some unspecified point after publication of the next IPCC Report, which is expected in October 2018. This intention is vulnerable to a change in political circumstances and / or further, indefinite postponement (which is not an unreasonable concern, given the failure of your client to respond properly to our client's correspondence throughout 2017, and its failure to commission any advice from the CCC on the implications of the Paris Agreement since it was signed nearly three years ago).

Given the urgency of the situation (as recognised elsewhere by the Government), there is no logical reason to delay commissioning the review from the CCC now, so that the CCC could begin work and report as soon as possible after the final IPCC Report is published. That is particularly so given that the first draft of the IPCC report has already been published, stating that: *“Delayed action or weak near-term policies increase mitigation challenges in the long-term and increase the risks associated with exceeding 1.5°C global warming temporarily.”*

We would also note that the absence of an IPCC report did not prevent the Scottish Government from commissioning advice from the CCC on similar matters.

We would be grateful for your confirmation that such advice will be requested by the end of June 2018 or to explain why this is not possible.

### The scope of the request

In respect of (b), the Ministerial statements above are unclear as to the scope of the request that will be made to the CCC. They refer only to the *“implications of the Paris Agreement for the UK's long-term reduction targets.”* The fourth refers to the defendant requesting advice on how to achieve net zero by 2050,<sup>1</sup> which would appear to pre-judge what the outcome should be and significantly narrow the issues to be subject to the CCC's review. On the basis of your client's previous submissions to the Court, it appears possible that the CCC may be asked only to consider a 'net zero target' in the second half of the century.

It is uncertain whether your client intends to ask the CCC for advice, *inter alia*, on revising the 2050 Target specifically to ensure it reflects a fair UK contribution to the 1.5°C goal, in accordance with the Paris Agreement and the purposes of the Climate Change Act. Without further clarity on the scope of the intended instructions to the CCC, our

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<sup>1</sup> <https://hansard.parliament.uk/Commons/2018-05-01/debates/2F00601B-3FA9-4D62-8003-5F79A7547895/BusinessEnergyAndIndustrialStrategy>

clients cannot know whether the outcome for which they contend in this claim will in the event be addressed.

We would be grateful therefore if you could confirm that the scope of the intended review will include advice on the amendments the UK would need to make to the 2050 Target (amongst other things) so as to make an equitable contribution to the global climate obligation of “*holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*” (to adopt the wording of the Paris Agreement itself). If you cannot provide such confirmation, we would be grateful if you could explain why.

### **The timetable**

Third, beyond indicating that the Government intends to agree a timetable with the CCC, the deadlines for the advice and resultant decision by the Secretary of State remain completely open-ended. Accordingly, we do not know if the Defendant is proceeding with the requisite urgency, which forms a fundamental aspect of our clients’ claim. Climate change is caused by cumulative emissions. Any unnecessary delay in taking action only compounds the extent of the necessary corrective response, creates uncertainty for businesses and investors in the meantime, and discriminates against the younger generation by adding to their share of the burden. At present, it appears that any final decision by the Defendant on how to respond to the advice of the CCC might not be made until the end of next year or even later. If that is the case, then the current proceedings clearly remain highly relevant.

We would therefore welcome confirmation that the CCC will be asked to report in November 2018, and that the Secretary of State will make a decision as to how to proceed in December 2018. If you cannot do so, we would be grateful for an explanation of why this is the case.

### **Outstanding legal questions**

Finally, we would note that it is clear from the submissions to date that there exist substantial matters of legal dispute between the parties, including:

1. whether the purpose of the CCA is to commit the UK to a fair share of the global climate obligation;
2. whether the global climate obligation (as set out in the Paris Agreement) includes Parties setting domestic policy consistent with the 1.5°C temperature goal;

3. whether the UK's target should reflect the precautionary principle, equity, the obligation on developing country parties to show leadership, and reflect the country's highest possible ambition; and
4. whether the Government has an obligation under the Human Rights Act and the Equality Act to take reasonable and necessary measures against climate change, so as to avoid discriminatory impacts to current and future generations.

We believe it is in the interests of all parties to ensure the Secretary of State and the CCC are correctly interpreting the legal framework they are bound to apply to a review. Clearly these are matters of substantial public interest, which would be resolved definitively in the current proceedings and we would welcome your views on how they should appropriately be addressed.

#### **Costs**

If proceedings can be resolved on the basis that our clients have achieved their objectives for practical purposes, then we would welcome your agreement that the Defendant should pay our clients' costs in accordance with the ordinary principles set out in *M v Croydon*.

#### **Conclusion**

We look forward to your urgent response to this letter with a view to clarifying the Defendant's position, but otherwise allowing appropriate time to prepare for the hearing on 4 July 2018. In particular, we would wish to emphasise that our clients will naturally adopt a reasonable and pragmatic response to any assurances your client can offer on each or any of the issues identified in this letter. In the interim, we continue to prepare for that hearing and are incurring the costs of doing so, which we will seek to recover.

For the avoidance of doubt, this is an open letter and we will draw it to the Court's attention at the forthcoming permission hearing.

Yours faithfully



**Bindmans LLP**